IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIV. CONTEMPT PET. No. 11 of 2007

DURGA SHANKER
V/S
BASLDEV SINGH BHARI

Mr. VINEET JAIN for Mr. S MEHTA, for the appellant / petitioner

Mr. GR PUNIA, for the respondent

Date of Order : 23.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

I have heard the learned counsel for the parties.

The contempt petition has been filed by the accused petitioner alleging inter-alia that on 15.3.2007 he could not present himself, therefore, an application for exemption from personal appearance was filed, but the same was dismissed, and bail bonds were forfeited vide order dated 15.3.2007, against which a revision was filed, which claimed to be allowed by the Revisional Court vide order Annex.3, and thereby the accused-petitioner was directed to present himself before the trial Court and submit bail bonds and also was directed to submit reply to the proceedings under Section 446 Cr.P.C. The petitioner accordingly, appeared and moved an application under Section 437 Cr.P.C. However, despite the clear direction of the Revisional Court, the application was rejected, and the accused was remanded to the judicial custody till 30.4.2007 vide Annex.5. Thereafter, he moved an application under Section 439 Cr.P.C. before the learned additional Sessions Judge, Abu Road, and was granted bail therefrom on 18.4.2007. Thus, it is contended that this act of the

contemner amounts to deliberate disobedience of the order of the Revisional Court, and amounts to civil contempt under Section 2(b) of the Contempt of Courts Act, 1971.

Notices were issued to the contemner, who filed reply on 20.7.2007 contending inter-alia that the petitioner was somehow lingering the prosecution, the case being old case, on 9.3.2007 final arguments were heard, but since the accused did not appear, at the request of learned counsel, the matter was adjourned for 15.3.2007 for judgment. However, accused did not appear on 15.3.2007 and application was filed for exemption, which was rejected. Regarding order of Annex.3, it is submitted that the Revisional Court observed that the trial Court may pass order in its discretion in accordance with law and on merits of the case. However, the respondent decided the application filed by the accused under Section 437 Cr.P.C., and has not flouted the order of the Revisional Court Annex.3. Then it is contended that the application under Section 437 was decided exercising judicial discretion and on merits.

The matter was listed in the Court on 21.8.2007 on which day, the matter was heard for quite some time and was ordered to be listed today. Today contemner is present and has also filed an additional affidavit.

I have heard learned counsel for the parties and have gone through the file.

The contemner is present in person, and has also filed additional affidavit today.

The contents of the affidavit as filed today and the stand taken in reply, if read together, do clearly show that the affidavit filed today is no better than crocodile

tears being shed before the Court in an attempt to get over the contempt. In the reply, a positive stand was taken, to the effect that the Revisional Court directed the accused-petitioner to appear before the learned trial Court, and the accused appeared, and submitted application under Section 437 Cr.P.C. Then in para-7, it is pleaded that the contemner while exercising powers of Judicial Magistrate, after considering the rival arguments, rejected the application Annex.4 filed by the petitioner-accused, and committed him in judicial custody. It is then pleaded that the learned Additional Sessions Judge clearly directed by its order dated 12.4.2007 that the trial Court shall decide the matter in its discretion in accordance with law and on merits of the case, and that the respondent being a judicial officer has decided the application filed by the accused under Section 437 Cr.P.C.

In my view, this is a clear stand of disobedience of the order of the learned Revisional Court, inasmuch as, the Revisional Court in the order Annex.3 had clearly set aside the order of the trial Court dated 15.3.2007, and directed the accused to appear in the trial Court on 16.4.2007 and submit the bail bonds as required and file reply in the proceedings under Section 446 Cr.P.C., and the trial Court was directed to pass order in accordance with law. Obviously no order was required to be passed in the matter, as to whether the accused is to be released on bail or committed to custody, but the order was required to be passed in the proceedings under Section 446, as the learned District Judge has clearly directed to submit the bail bonds, and did not leave any free play for the contemner to exercise any power to commit the accused into custody.

It appears that the contemner was of the view that the matter was at the stage of final judgment, and the accused did not appear, therefore, the personal exemption

was refused. It further appears that irrespective of the order of the Revisional Court, in order to exert his authority, again sent the petitioner to custody, jeopardising the liberty of the accused-petitioner, despite the order of the Revisional Court; this apart from amounting flagrant insubordination of the Revisional Court, is clearly in disobedience of the order thereof, and the contemner is, therefore, clearly guilty of the contempt.

Accordingly, the contemner is found guilty of civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971.

I have heard the contemner on the question of sentence. However, taking a lenient view, he is sentenced with simple imprisonment for a period of 7 days.

(N.P.GUPTA),J.

At this stage, the contemner has filed an application for suspension of sentence. In view of the facts mentioned in the application, the sentence awarded to the applicant is suspended for a period of one month from today on his furnishing a personal bond in the sum of Rs.10,000/- to the satisfaction of the Dy. Registrar (Judl.).

(N P GUPTA),J.

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